

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 9314-59
I hereby certify that this correspondence is being transmitted electronically to the U.S. Patent and Trademark Office on <u>May 23, 2007</u> Signature <u>Amelia Tauchen</u>	Application Number 10/723,776	Filed 11/26/2003
	First Named Inventor Daniel J. VanEpps	
Typed or printed name <u>Amelia Tauchen</u>	Art Unit 2618	Examiner Christian A. Hannon
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal.		
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <u>42,011</u> Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>		
 <p>Signature</p> <p>D. Scott Moore</p> <p>Typed or printed name</p>		
<p><u>42,011</u></p> <p>Telephone number</p> <p>May 23, 2007</p> <p>Date</p>		
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE--EXAMINING GROUP 2618**

Attorney Docket No. 9314-59

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

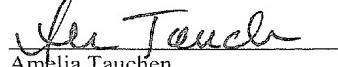
In re: VanEpps, Jr. et al.
Application No.: 10/723,776
Filed: November 26, 2003
For: **METHODS, ELECTRONIC DEVICES, AND COMPUTER PROGRAM
PRODUCTS FOR GENERATING AN ALERT SIGNAL BASED ON A SOUND
METRIC FOR A NOISE SIGNAL**

Group Art Unit: 2618
Confirmation No.: 9674
Examiner: Christian A. Hannon

Date: May 23, 2007

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Amelia Tauchen

**REASONS IN SUPPORT OF APPLICANT'S PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicant requests that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Appellants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed February 23, 2007 (hereinafter "Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Appellants respectfully submit that the rejections of the currently pending claims are clearly erroneous because many of the recitations of the pending claims are not met by the cited references for at least the reasons discussed herein. Therefore, Appellants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Appellants will only discuss the recitations of independent Claims 1, 11, 14, 17, 25, 30 - 32, 37, and 38.

Independent Claims 1, 17, 25, and 32 are Patentable

Independent Claims 1, 17, 25, and 32 stand rejected under 35 U.S.C. §102(b) as being anticipated by U. S. Patent No. 6,246,761 to Cuddy (hereinafter "Cuddy"). (Final Action, page 2). Independent Claim 1 recites, in part:

receiving a noise signal;
generating a sound metric for the noise signal by performing a Fourier transform on the noise signal to obtain a frequency domain representation of the noise signal, wherein **the sound metric is a loudness profile**; and
generating an alert signal having a spectral composition based on the sound metric. (Emphasis added)

Independent Claims 17, 25, and 32 include similar recitations. As highlighted above the sound metric generated for the noise signal is a loudness profile. This is described, for example, on page 9, lines 22 - 30. Note that loudness is not the same as sound intensity or power level. Loudness describes the strength of the ear's perception of a sound. Loudness is measured in terms of sones, where one sone is equivalent to 40 phons. A phon is defined as 1 dB of sound pressure level at 1 kHz above a nominal threshold of hearing. The Final Action cites the passage from Cuddy at col. 5, lines 40 - 46, which describes the analyzing ambient noise to determine its amplitude and frequency characteristics and then calculating the audible characteristics of the ringing tones so that they will be heard over the ambient noise. (Final Action, page 2). In sharp contrast to the recitations of Claims 1, 17, 25, and 32, however, **Cuddy does not disclose or suggest generating a loudness profile for the ambient noise signal**. Instead, Cuddy merely describes analyzing the amplitude and frequency characteristics of the ambient noise. (Cuddy, col. 5, lines 43 - 46).

Appellants respectfully request that the present application be reviewed and

the rejection of independent Claims 1, 17, 25, and 32 be reversed by the appeal conference prior to the filing of an appeal brief for at least the reasons set forth above.

Independent Claims 11, 30, and 37 are Patentable

Independent Claims 11, 30, and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cuddy in view of U. S. Patent No. 6,134,455 to Corkum (hereinafter "Corkum"). (Final Action, page 6). Independent Claim 11 recites, in part:

providing a plurality of alert profiles, each of the alert profiles being generated to have a spectral composition based on a noise signal sound metric associated with an ambient noise environment;

receiving a user selection of one of the plurality of alert profiles; and
generating an alert signal that is based on the selected one of the plurality of alert profiles.

Independent Claims 30 and 37 include similar recitations.

In rejecting independent Claims 11, 30, and 37, the Final Action cites col. 5, lines 40 - 49 of Cuddy as disclosing the use of a plurality of alert profiles. Appellants respectfully disagree. The cited passage of Cuddy explains that various techniques can be used to calculate the audible characteristics used to make the ringing tones heard over the ambient noise. One of the techniques involves the use of a look-up table in which the changes to the ringing tones' audible characteristics are associated with ranges of amplitude/frequency characteristics of the ambient noise. (Cuddy, col. 5, lines 50 - 59). Cuddy does not disclose or suggest that such table entries may be available for user selection. Rather, Cuddy states that it is preferable that the telephone "automatically adjust the audible characteristics (amplitude, frequency and/or cadence) of its ringing tones to overcome ambient noise and the effect of the environment immediately surrounding the telephone..." (Cuddy, col. 3, lines 24 - 28).

The Final Action cites Corkum as teaching a user selection for a particular alert profile. (Final Action, page 6). This passage cited from Corkum describes the ability of a user to override the automatic ringer volume function by selecting a default or desired annunciation level. (Corkum, col. 6, lines 55 – 60). As discussed above, however, Cuddy does not teach that the changes to the ringing tones' audible characteristics, e.g., amplitude and frequency, are available for selection by a user as the particular changes are selected automatically based on the phone's analysis of the ambient noise. Thus, even if Cuddy is

modified to include the teachings of Corkum, the result would be a phone in which the automatic ringing volume function can be overridden by a user, but the user would not be able to select such audible characteristics as the frequency or spectral composition of the ringing tone as recited in independent Claims 11, 30, and 37.

Accordingly, for at least the foregoing reasons, Appellants respectfully request that the present application be reviewed and that the rejection of independent Claims 11, 30, and 37 be reversed by the appeal conference prior to the filing of an appeal brief.

Independent Claims 14, 31, and 38 are Patentable

Independent Claims 14, 31, and 38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cuddy. (Final Action, page 6). Independent Claim 14 is directed to a method of operating an electronic device and recites, in part:

providing a plurality of alert profiles, at least one of the plurality of alert profiles having a different spectral composition than other ones of the plurality of alert profiles; then
 receiving a noise signal;
 selecting one of the plurality of alert profiles responsive to receiving the noise signal; and
 generating an alert signal that is based on the selected one of the plurality of alert profiles.

Thus, according to independent Claim 14, at least one of the alert profiles has a different spectral composition than other ones of the alert profiles.

The cited passage of Cuddy explains that various techniques can be used to calculate the audible characteristics used to make the ringing tones heard over the ambient noise. One of the techniques involves the use of a look-up table in which the changes to the ringing tones' audible characteristics are associated with ranges of amplitude/frequency characteristics of the ambient noise. (Cuddy, col. 5, lines 50 - 59). Cuddy does not explicitly teach whether the table entries regarding changes to the ringing tones include entries that have different spectral composition, i.e., different frequency changes. Cuddy merely states that the table includes records "incorporating information relating to the necessary change (over a default setting) of audible characteristics of the ringing tones to be heard over the ambient noise." (Cuddy, col. 5, lines 55 - 57).

Accordingly, for at least the foregoing reasons, Appellants respectfully request that the present application be reviewed and that the rejection of 14, 31, and 38 be reversed by the

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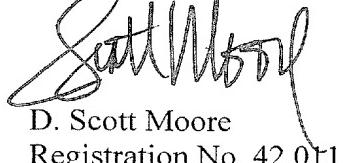
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Filed: November 26, 2003

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appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



D. Scott Moore

Registration No. 42,011

USPTO Customer No. 54414

Myers Bigel Sibley & Sajovec

Post Office Box 37428

Raleigh, North Carolina 27627

Telephone: (919) 854-1400

Facsimile: (919) 854-1401